

STATE OF MICHIGAN  
COURT OF APPEALS

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RAYMOND NELSON BORDEAU,

Plaintiff/Counter Defendant-  
Appellant,

v

CONSTANCE LYNN BORDEAU,

Defendant/Counter Plaintiff-  
Appellee.

UNPUBLISHED

June 19, 2003

No. 234964

Saginaw Circuit Court

LC No. 97-019614-DM

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Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals as of right the trial court's property division, alimony decision, and attorney fee award. We affirm.

I.

Plaintiff challenges the trial court's valuation of the parties' marital home and argues that the court should have used the value asserted by plaintiff's appraiser and should have deducted his expert's valuation of a life estate held by plaintiff's mother. We disagree.

In reviewing a property division, we will not reverse a trial court's factual findings unless they are clearly erroneous, i.e., this Court is left with the definite and firm conviction that a mistake has been made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990); *Stoudemire v Stoudemire*, 248 Mich App 325, 336-337; 639 NW2d 274 (2001). When expert witnesses give divergent estimates concerning the appropriate value of marital property, the trial court has great latitude in arriving at a final figure. *Pelton v Pelton*, 167 Mich App 22, 26; 421 NW2d 560 (1988). Here, the trial court properly decided to value the marital home at \$65,000 after finding that the appraisal by defendant's expert more accurately reflected the value of the property. Importantly, plaintiff's expert admitted that nearby vacant parcels containing comparable acreage, including the expert's own property, had sold for as high as \$62,000. In addition to the underdeveloped value of the property, the subject parcel contained a serviceable detached garage, valued at \$12,000 by plaintiff's expert. Therefore, were we to agree with plaintiff and place a negligible value on the marital home itself, the trial court did not clearly err in its determination that defendant's appraisal more closely reflected the value of the property.

Also, plaintiff argues that the trial court clearly erred in refusing to deduct a substantial amount from the value of the property to represent the life estate held by his mother. Plaintiff does not provide supporting authority for the appropriate valuation of the life estate under the circumstances of this case but maintains that, when a person entitled to a life estate is wrongfully evicted, the measure of damages is calculated by determining the fair rental value of the property and multiplying it by the life tenant's life expectancy as reduced to present value. See *Grove v Youell*, 110 Mich 285, 291; 68 NW 132 (1896). While this calculation may be appropriate under those circumstances, this case presents a much different situation. Here, the life tenant has not been evicted and neither plaintiff nor his mother intended to sell the property. Both plaintiff and his mother testified that she intended to return to the home where she would live with plaintiff. Further, plaintiff would continue to pay property taxes and to pay for the maintenance of the home. Thus, as to the parties in this action, the monetary value of the life estate was essentially negligible. Therefore, we find that the trial court did not clearly err in deciding not to deduct the life estate from the property valuation to determine an equitable division of marital property.

## II.

Plaintiff also says that the trial court erred in awarding defendant the entire amount of proceeds from her personal injury claims from a 1994 automobile accident. Plaintiff maintains that the money is marital property subject to division. Had the trial court, in fact, determined that the entire proceeds were separate property, plaintiff would be correct. *Bywater v Bywater*, 128 Mich App 396, 399-400; 340 NW2d 102 (1983); *Heilman v Heilman*, 95 Mich App 728, 731; 291 NW2d 183 (1980). However, though the property was awarded to defendant, the trial court did not specifically state that the proceeds were defendant's separate property. Instead, it appears that the trial court simply awarded the property to defendant in lieu of other awards. We find no clear error concerning the classification of the proceeds.

## III.

Plaintiff further maintains that the trial court's property division was inequitable. We disagree.

This Court performs a de novo review of the trial court's property division and will affirm the dispositional ruling unless left with a firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992); *Stoudemire, supra* at 336-337. Absent a binding agreement between the parties, the goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *McNamara v Horner*, 249 Mich App 177, 188; 642 NW2d 385 (2002); *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). The division need not be mathematically equal, but any significant departure from congruence should be supported by a clear exposition of the court's rationale. *Smith v Smith*, 113 Mich App 148, 150; 317 NW2d 324 (1982); *McNamara, supra*; *Byington, supra* at 114-115. To reach an equitable division, the trial court should consider factors such as the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health and needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *Sparks, supra* at 158-160; *McNamara, supra* at 185.

Here, other than the challenge to the valuation of the marital home and the classification of the personal injury claim proceeds, plaintiff does not claim that the trial court erred in valuing the other assets subject to division.<sup>1</sup> Thus, calculating the award based upon the values stated in the trial court's findings of fact, including the \$65,000 value for the marital home, we find that defendant was awarded approximately \$90,929 of the parties' marital property, and plaintiff was awarded property worth approximately \$65,724. Therefore, defendant received fifty-eight percent of the parties' \$156,653 in total assets, while plaintiff received forty-two percent of the assets.

Though the awards were not equal, the trial court's decision that the awards were equitable is supported by its findings of fact. Plaintiff maintains that the trial court exclusively considered plaintiff's fault when reaching its determination. However, while the court did include plaintiff's decision to leave the marital home and reside with his female neighbor in its decision, this factor was only one of those considered by the court. The court also placed reliance on the duration of the marriage, and the testimony that both parties had contributed to the estate. The trial court's property award is also supported by the fact that plaintiff planned to live with his mother in the marital home, while defendant would have to find other housing.

Additionally, the court found that, although plaintiff's health was excellent and that he earned a substantial yearly income, defendant was in poor health and unable to obtain employment due to the injuries she sustained in the automobile accident. Although plaintiff disputes this finding, he has failed to show that the court clearly erred in its determination. Defendant's treating physician testified that, though defendant's disabilities may have had a psychological origin, they were genuine. She testified that defendant could not work without restrictions, and that defendant's level of education provided only limited employment prospects. She also testified that defendant had additional symptoms of depression and insomnia. The trial court could properly have relied on this testimony, as well as that of defendant herself, in determining that defendant continued to suffer a disability from the accident and was unable to work in any meaningful capacity. Therefore, the trial court's property division decision was equitable under the circumstances.

#### IV.

Plaintiff also challenges the trial court's decision to award alimony to defendant. For the reasons stated above, we find no error in the court's alimony award. The trial court properly exercised its discretion in determining that an alimony award was appropriate due to the substantial difference in incomes and the financial positions of the parties. *Moore v Moore*, 242 Mich App 652, 654; 619 NW2d 723 (2000); *Demman v Demman*, 195 Mich App 109, 110; 489 NW2d 161 (1992).<sup>2</sup>

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<sup>1</sup> We also accept plaintiff's trial valuation of \$26,000 for the value of the personal injury proceeds.

<sup>2</sup> We also decline to amend the judgment to include language directing defendant to inform plaintiff if she subsequently qualifies for social security disability benefits. Such an amendment is unnecessary given the language in the judgment requiring the parties to inform the Friend of the Court of changes in their respective current sources of income.

V.

Plaintiff argues that the trial court abused its discretion in awarding defendant \$2,500 in attorney fees. We disagree.

In a divorce action, attorney fees are not recoverable as of right, but are “awarded only where necessary to preserve the party’s ability to carry on or defend the action.” *Stoudemire*, *supra* at 344; see also MCL 552.13(1) and MCR 3.206(C)(2). However, an award of attorney fees may be proper if the parties’ incomes are significantly disparate. *Vollmer v Vollmer*, 187 Mich App 688, 690; 468 NW2d 236 (1990). Moreover, attorney fees also may be authorized when the requesting party has been forced to incur expenses as a result of the other party’s unreasonable conduct in the course of litigation. *Hanaway v Hanaway*, 208 Mich App 278, 299; 527 NW2d 792 (1995); *Maake v Maake*, 200 Mich App 184, 189; 503 NW2d 664 (1993).

Here, defendant testified that, as of the date of trial, she owed her attorney \$7,100 in fees. Plaintiff says that he should not have been forced to pay a portion of defendant’s attorney fees because they were incurred as the result of defendant’s unreasonable actions. However, a number of other unnecessary expenses may also be properly credited to plaintiff’s conduct. The trial court did not abuse its discretion in awarding partial attorney fees to defendant.<sup>3</sup> *Hanaway*, *supra* at 299; *Maake*, *supra* at 189.

Affirmed.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder

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<sup>3</sup> Plaintiff’s additional argument, that defendant was “cash rich” as a result of the property and spousal support awards, has little merit. Even with the award, defendant was required to either invade the principal amount of the property settlement, or to use monies designated for her support, to pay the remainder of her attorney fees.